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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,171	04/19/2004	Daniel M. Green	UNII.0090CON	2412

3775 7590 06/08/2006
ELMAN TECHNOLOGY LAW, P.C.
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EXAMINER

LEE, Y YOUNG

ART UNIT PAPER NUMBER

2621

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/827,171	GREEN ET AL.	
	Examiner	Art Unit	
	Y. Lee	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/06 has been entered.

Drawings

2. The drawings are continued to be objected to for the same reasons as set forth in Section 1 of the last office action, dated 12/27/05, because all diagrammatic blocks and features in Figures 1-4, 6-8, and 11 are required to be distinctly labeled to indicate contents or function with legends (37 C.F.R. 1.83(a), 1.84(o)) since they are necessary for understanding of the drawing. Correction is required.

Applicant asserts that USPTO should conform to international practice. However, if certain international practice does not meet USPTO requirement, applicant is required to make the necessary corrections. In this case, the clearly labeled features would enable better understanding of the current invention.

Applicant also asserts that the parent case did not have these labels. However, such requirement may have been inadvertently overlooked in the parent application. If applicant wishes, a certificate of correction may be submitted to correct the drawings in the parent case.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-15 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Linker et al (5,376,790).

Linker et al, in Figures 1, 10-13, and 16-18, discloses a scanning probe microscope using the same method for acquiring images as specified in claims 1-15 and 31 of the present invention, comprising the steps of configuring an optical microscope system which comprises a camera CCD having a photosensitive surface and providing an output image representing a frame as a sequence of electrical signals 1302, a microscope 100 adapted to expose one optical image on the photosensitive surface of the camera for conversion to one output image representing one frame, an information handling system and a device for altering an image acquisition parameter (Fig. 13); acquiring members of a stack of output images 1302 at a rate equal to or less than and substantially close to the maximum image acquisition rate of the camera (e.g. maximum scan rate); and altering, during image acquisition, at least one image acquisition parameter 110 which applies to the next image; wherein the configuring step comprises initializing a range of values over which the image acquisition parameters will vary during the acquiring of images (e.g. Fig. 11D-F).

With respect to claims 2-15 and 31, Linker et al discloses at least one image acquisition parameter being altered during image acquisition is focus plane, light intensity (e.g. Fig. 10), excitation wavelength or emission wavelength, whereby a stack of fluorescence images is acquired; initializing a duration of time during which images will be acquired 1304; wherein, during acquisition of at least one image, excitation wavelength and emission wavelength (e.g. Fig. 17) which apply during inter-frame time (i.e. next image) are altered; wherein the information handling system comprises a memory, further comprising the step of storing a stack of images 1302 in the memory; an objective lens 126 and an objective lens positioner 1220, and wherein the computer program product contains programming for directing the objective lens positioner to reposition the objective lens 126 between images; an examination site and an examination site positioner (Fig. 12), and wherein the computer program product contains programming for directing the examination site positioner to reposition the examination site between images.

Response to Arguments


5. Applicant's arguments with respect to claims 1-15 and 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y. Lee whose telephone number is (571) 272-7334. The examiner can normally be reached on (571) 272-7334.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on (571) 272-7950. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Y. Lee
Primary Examiner
Art Unit 2621

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